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09/996,506	11/28/2001	Robert E. Johnson	JOH26 P-300	3065

277 7590 05/12/2003

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EXAMINER

FITZGERALD, JOHN P

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 05/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/996,506

Applicant(s)

JOHNSON, ROBERT E.

Examiner

John P Fitzgerald

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

## DETAILED ACTION

### *Drawing Objections*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: anchor "31." A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

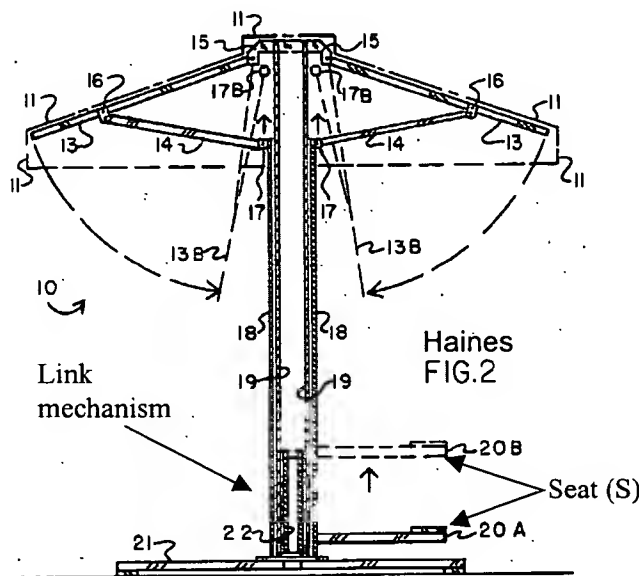
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2 and 4-8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Haines. Haines discloses a covered apparatus (10) (Figs. 1-3) having a body supporting member (20) defining a seating area; a hood (11-15) operably supported over the seating area "for" movement between a hiding position where the hood is located over and hides the seating area and an open position where the hood is moved to uncover the seating area; and a link-and-bias mechanism (19, 22) operably connected to the hood to automatically move the hood toward the open position when a hunter removes his weight from the body-supporting member; wherein the body-supporting member comprises a seat (S) configured and adapted to support a person's body weight; framework (18) operably supporting the body-supporting member and the hood; a base (21) supporting the framework, the base including radially extending legs (Haines: col. 2, lines

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15-19) configured to stably support the body-supporting member and hood in a freestanding manner; a link mechanism (22) connecting the body-supporting member to the hood; wherein the framework includes tubular members defining an internal cavity and wherein the link mechanism includes a movable component (22) located within the cavity of the framework.



### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

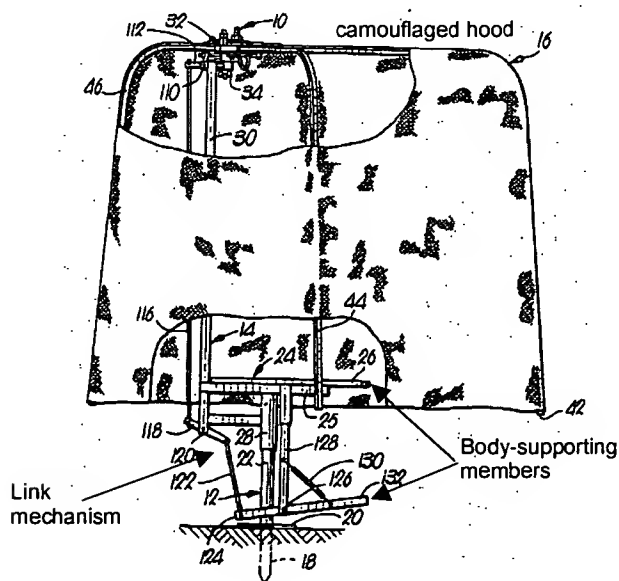
5. Claims 1-4, 6, 7 and 10-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 3,902,264 to Radig. US 3,902,264 to Radig discloses a covered apparatus (Figs. 1-5) having two body-supporting members (26, 132), one of which is a seat (26) "adapted to" support

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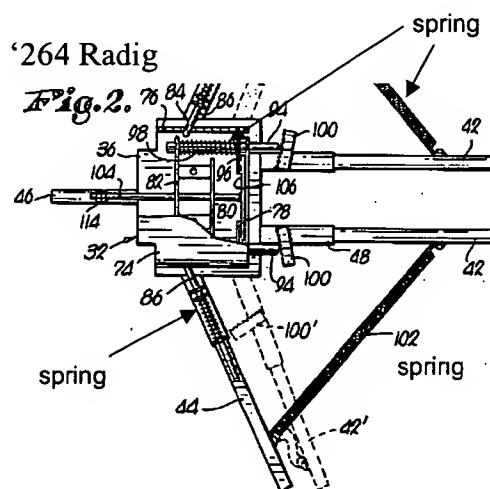
a person's body weight and defining a seating area; a hood (16) including a flexible covering that is camouflaged and made of a material suited for outdoor use (US 3,902,264 to Radig: col. 3, lines 32-34); the hood operably supported over the seating area "for" movement between a hiding position where the hood is located over and hides the seating area and an open position where the hood is moved to uncover the seating area (Fig. 3); and a link-and-bias mechanism operably connected to the hood to automatically move the hood toward the open position when a hunter applies his weight to the body-supporting member (132); a framework of tubular members (12, 14) operably supporting the body-supporting members and the hood; a base (18, 20) supporting the framework to stably support the body-supporting member and hood in a freestanding manner; a link mechanism (116, 118, 122) connected to the rear of the seat and connecting the body supporting member (132) to the hood; and including a spring attached to the hood (102) and biasing the hood toward the uncovered position; a latch (94) on the framework that engages the link mechanism via links (82, 104) to the body-supporting member (132), the latch held in position until a person rests his/her body on the body-supporting member, at which time the latch is released; the latch holding the hood against a force of a springs that "can be" selectively used individually or in combination with each other (90, 98, 130) and being operably connected to the body-supporting member; and the base, hood and body-supporting member being configured to fold into a compact portable package for easy carriage (Fig. 3) (US 3,902,264 to Radig: col. 1, lines 55-65). Although US 3,902,264 to Radig does not expressly disclose that the hood moves toward the open position when a hunter removes his weight from the seat body supporting member, however, US 3,902,264 to Radig expressly discloses that the weight activated body-supporting member (132), which moves the hood toward the open

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position when a hunter applies his weight to the body-supporting member (132). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the weight activated mechanism to the body-supporting member (26) such that it operably moves the hood toward the open position when a hunter removes his weight from the body-supporting member. Additionally, it is considered old and well known to one skilled in the art to employ various automatic mechanisms and latches operably connected to hoods via link-and-bias mechanism to move them between open and closed positions due to application of weights and pressures by a user, as well as to lock and hold the hoods in the open or closed positions. Lastly, in specific regards to claim 14, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an elastic cord since the examiner takes Official Notice of the equivalence of a spring and an elastic cord for their use in the art and the selection of any of these known equivalents to provide an elastic retracting force would be within the level of ordinary skill in the art.



'264 Radig  
Fig. 1

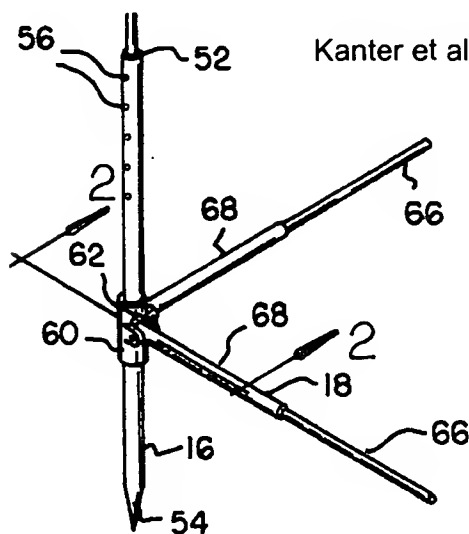


'264 Radig  
Fig. 2

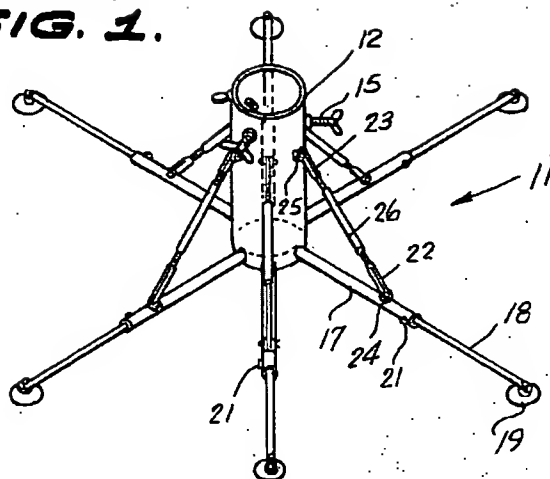
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6. Claims 5 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 3,902,264 to Radig as applied to claims 1, 4 and 16 above, and further in view of Kanter et al. and Seaman, Jr. US 3,902,264 to Radig discloses a covered apparatus having all of the elements stated previously. US 3,902,264 to Radig does not expressly disclose a covered apparatus wherein the base includes a plurality of horizontally-oriented radially-extending tubes as legs and includes a plurality of elongated rods shaped to telescope into the tubes, the rods each having an outer end configured to stably engage a ground surface when the rods are telescoped into the tubes, and having an inner end with a retainer thereon shaped to retain the rods to the tubes when the rods are telescoped out of the tubes but further permitting the rods to pivot to a vertical position against the base for compact storage. Kanter et al. teach a covered apparatus (Figs. 1-6) wherein the base includes a plurality of horizontally-oriented radially-extending tubes (68) as legs and includes a plurality of elongated rods (66) shaped to telescope into the tubes, the tubes having an inner end with a retainer (62) thereon permitting the rods to pivot to a vertical position against the base for compact storage. Kanter et al. further teach a retaining means (48, 56) mounted on a base tube to retain telescoping members in a fixed relationship. Seaman, Jr. teaches a base (11) (Figs. 1-3) having a plurality of telescoping legs with outer ends (19) configured to stably engage a ground surface when the rods are telescoped into the tubes and a retainer (21) thereon shaped to retain the rods in the tubes when the rods are telescoped out of the tubes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the base elements taught by Kanter et al. and Seaman, Jr., modifying the base disclosed by US 3,902,264 to Radig, thus increasing the stability and wind resistance of the covered apparatus (Kanter et al. col. 1, lines 58-60).

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Kanter et al. FIG. 1 | Seaman, Jr. FIG. 1.



7. Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Haines as applied to claims 1, 2, 4-8 under 35 U.S.C. § 102(b) above, and further in view of Dubinsky. Haines discloses a covered apparatus having all of the elements stated previously. Haines does not expressly disclose a covered apparatus wherein the link mechanism includes a cable. Dubinsky teaches a covered apparatus (Figs. 1-3) having a link mechanism (18, 36, 38) including a cable within the hollow internal cavity of the framework (20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a link mechanism including a cable within the framework, as taught by Dubinsky, modifying the covered apparatus disclosed by Haines, resulting in a covered apparatus requiring minimum operating force to open (Dubinsky: col. 1, lines 63-65). Furthermore, it is considered well within the capabilities of one skilled in the art to route cables or portions of a link mechanism within the framework of a covered apparatus, if so desired, or by design choice.

8. Claims 18-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 3,902,264 to Radig and Dubinsky. US 3,902,264 to Radig discloses a covered apparatus (Figs. 1-5) having a base (20); an upright tubular frame (12, 14) supported on the base; a seat (26)



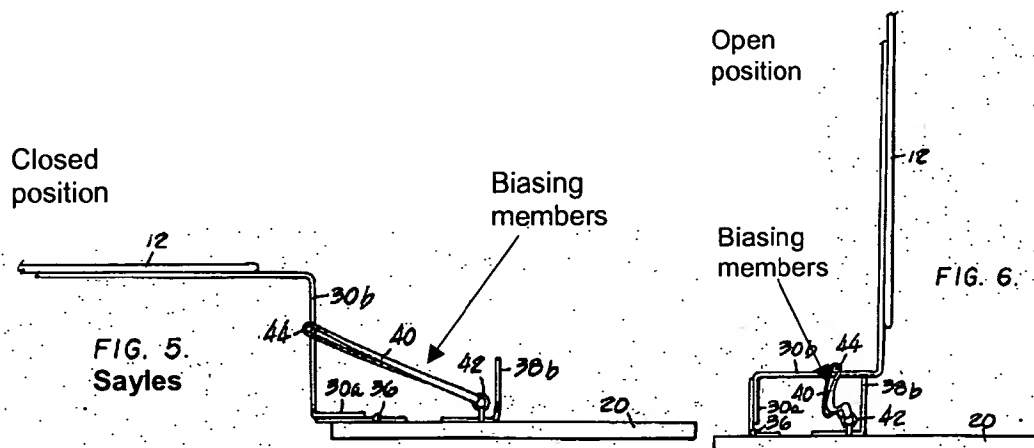
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supported on the base and the upright tubular frame; a hood (16) supported on the upright frame over the seat and that is movable between a hiding position where the hood is located over the seat and an open position where the hood is not located over the seat; a latch (94) attached to the upright tubular frame and operably connected to the seat and to a body-supporting member (132); biasing springs (102) attached to the hood and biasing the hood toward the open position; and additional springs (90, 98, 130) operably connected to the upright tubular frame to control the opening of the hood. US 3,902,264 to Radig does not expressly disclose a blind further including a cable that extends at least partially through the tubular frame and that connects the hood to the latch. Dubinsky teaches a covered apparatus (Figs. 1-3) having a link mechanism (18, 36, 38) including a cable within the hollow internal cavity of an upright tubular frame (20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a link mechanism including a cable within the upright tubular frame of the blind disclosed by US 3,902,264 to Radig, resulting in a covered apparatus requiring minimum operating force to open (Dubinsky: col. 1, lines 63-65). Furthermore, it is considered well within the capabilities of one skilled in the art to route cables or portions thereof, as well as portions of a link mechanism within the tubular frame of a blind or covered apparatus, if so desired, or by design choice.

9. Claim 21 is rejected under 35 U.S.C. § 103(a) as being unpatentable over US 3,902,264 to Radig and Dubinsky as applied to claim 18 above, and further in view of Sayles. US 3,902,264 to Radig and Dubinsky disclose a blind having all of the elements stated previously. US 3,902,264 to Radig and Dubinsky do not expressly disclose a blind including an additional biasing spring, the springs being individually releasably attached so that the springs can be used

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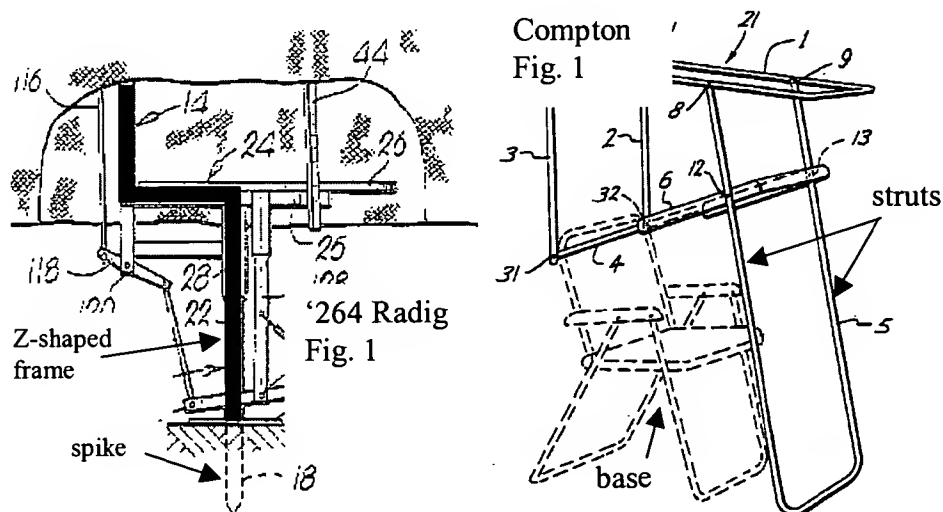
singularly or together to bias the hood open at a selected speed. Sayles teaches a blind (Figs. 1-6) having a pair of biasing members (40) individually and releasably attached to a hood (10) that is movable between an open position and a closed position; the biasing members being rubber bands, springs or other resilient members (Sayles: col. 4, lines 4-7). Sayles further teaches that the "size" (i.e. elastic spring constant) of the biasing members are chosen such that weight of the hood can be overcome easily as the hood is moved to the open position (Sayles: col. 3, line 58 to col. 4, line 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the spring arrangement of the blind disclosed by US 3,902,264 to Radig and Dubinsky, by employing individually releasably biasing springs taught by Sayles, thus allowing the hood to be moved to either the closed cover position or the open position quickly (Sayles: col. 2, lines 19-21).



10. Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over US 3,902,264 to Radig and Clopton. US 3,902,264 to Radig discloses a blind (Figs. 1-5) having a base (20); a Z-shaped frame supported on the base and having a vertical bottom post (12), a vertical top post (30), an offset section (24) connecting the top and bottom posts, one of the top post, the bottom post, and the offset section including a releasable latch (94); a hood (16) operably connected to

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and supported for movement on the top post; and a seat (26) supported in a balanced position over the vertical bottom post and connected at a rear portion to the vertical top post and connected to the releasable latch. US 3,902,264 to Radig does not expressly disclose a blind wherein the base includes struts; and wherein the front section of the seat is supported by struts and the rear section is supported by the base. Clopton teaches a blind (Fig. 1) wherein a front portion includes struts (5) to support the blind. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a base with struts, as taught by Clopton, modifying the base and seat disclosed by US 3,902,264 to Radig, thus providing a compact, lightweight, foldable frame that can be easily transported and stored (Clopton: col. 1, lines 66-68).



11. Claims 23-27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 3,902,264 to Radig, Kanter et al., a French Document 2577302 to Contant and Seaman, Jr. US 3,902,264 to Radig discloses a blind (Figs. 1-5) having a base (20) including a spike (18) to engage a ground surface; a hood (16) operably supported by the base for movement between a hiding position over the base and an uncovered position revealing the base. US 3,902,264 to

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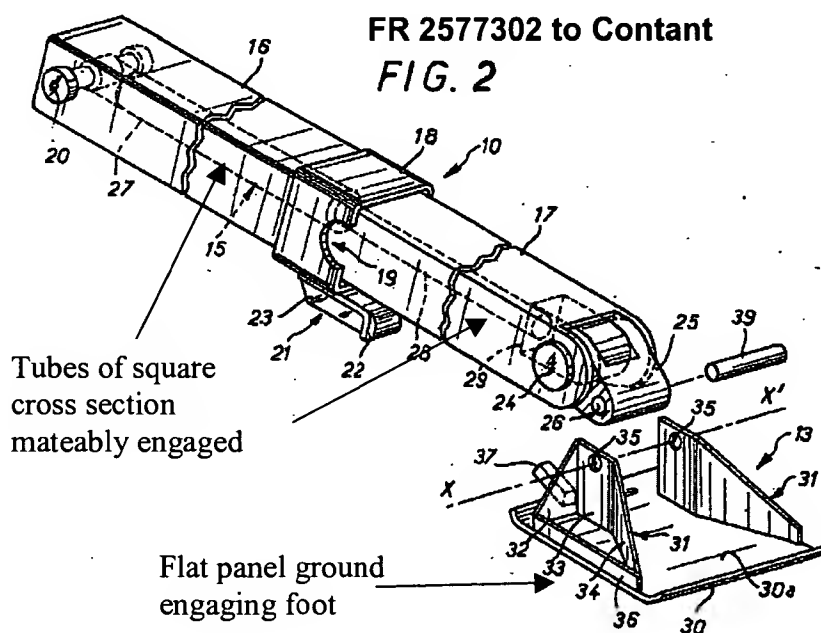
Radig does not expressly disclose a blind wherein the base includes a plurality of horizontally-oriented radially-extending tubes with square cross sections and including a plurality of elongated rods with mating cross section shaped to telescope into the tubes, the rods having an outer end configured to stably engage a ground surface when the rods are telescoped into the tubes; wherein the rods include first, second and third kinds of feet "useful" for engaging first, second and third kinds of ground surfaces; wherein the first kind of foot includes a spike, the second kind includes a panel; wherein the rods include square tubes shaped to mateably non-rotatably engage the radially-extending tubes; and wherein the tubes have an inner retainer thereon shaped to retain the rods to the tubes when the rods are telescoped out of the tubes but that further permits the rods to pivot to a vertical position against the base for compact storage.

Kanter et al. teach a covered apparatus (Figs. 1-6) wherein the base includes a plurality of horizontally-oriented radially-extending tubes (68) as legs and includes a plurality of elongated rods (66) shaped to telescope into the tubes, the tubes having an inner end with a retainer (62) thereon permitting the rods to pivot to a vertical position against the base for compact storage.

Kanter et al. further teach a retaining means (48, 56) mounted on a base tube to retain telescoping members in a fixed relationship. French Document 2577302 to Contant teaches a base (Figs. 1-3) having a radially extending tube (16) with a square cross section and an elongated rod (17) having a mateably non-rotatably engaging square cross section tube slidably received in the tube (16); a foot (30) with a panel to engage a ground surface. Seaman, Jr. teaches a base (11) (Figs. 1-3) having a plurality of telescoping legs with feet (19) configured to stably engage a ground surface when the rods are telescoped into the tubes and a retainer (21) thereon shaped to retain the rods in the tubes when the rods are telescoped out of the tubes. It

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would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the base elements taught by Kanter et al., French Document 2577302 to Contant and Seaman, Jr., modifying the base disclosed by US 3,902,264 to Radig, thus increasing the stability and wind resistance of the covered apparatus (Kanter et al. col. 1, lines 58-60) and to engage various types of ground surfaces. In specific regards to the three “kinds” of feet “useful” for engaging three “types” of ground surfaces, it is considered well within the design choice capabilities of one having ordinary skill in the art to vary the feet on a base to actively engage various types of ground surfaces, which is dependent upon intended use of the invention.



### *Conclusion*

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jones teaches a canopy apparatus having framework and a latch operably coupled to a seat; Smith teaches a blind wherein the cover flips open due to tension on elastic cords; Blinkilde et al. teaches a device to detect the presence of a user employed in a seat; Rudkin, Jr.

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teaches a canopy top that flips to uncover a seating area; Gillen et al. teaches a blind having a canopy top that moves from a closed to an open position; Carper teaches a blind having a canopy portion the moves from a closed to an open position using springs in tension; Kidwell et al. teaches a canopy attachment for a seat that moves from a closed to an open position; Chen teaches an automatic weight-activated mechanism on a seat; IT 487193 to Braggio et al. teaches a canopy apparatus having a Z-shaped frame of tubular members and support struts with spikes; and a web document to Pop-Up Blinds teaches a blind having a seat and a top that snaps back to an open position from closed position.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Fitzgerald whose telephone number is (703) 305-4851. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai, can be reached on (703) 308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9302 before final action, and (703) 872-9327 after final action. Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1113.



JF  
04/30/2003

LANNA MAI  
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